

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 KAFOA MO-TALAU HEFA,

11 Plaintiff,

12 v.

13 MICHAEL HANRATTY, *et al.*,

14 Defendants.

CASE NO. C20-5475-JCC

ORDER

15 This matter comes before the Court on Defendants' objections (Dkt. No. 35) to the report
16 and recommendation ("R&R") of the Honorable J. Richard Creatura, United States Magistrate
17 Judge. (Dkt. No. 34.) Having thoroughly considered the parties' briefing and the relevant record,
18 the Court hereby MODIFIES and ADOPTS the R&R for the reasons explained below.

19 **I. BACKGROUND**

20 Plaintiff Kafoa Mo-Talau Hefa is currently incarcerated at Coyote Ridge Correctional
21 Center. (Dkt. No. 4 at 2.) After he was suspected of smuggling contraband into the facility,
22 Plaintiff was placed under dry cell watch, that is, prison officials denied him access to a sink and
23 toilet based on suspicion that he had injected contraband. (*See* Dkt. No. 4 at 4–5.)

24 Plaintiff, proceeding *pro se*, filed a 42 U.S.C. § 1983 complaint alleging that Defendants
25 Lieutenant Michael Hanratty and Investigator Arin Reining violated his procedural due process
26 rights and subjected him to false imprisonment and unlawful restraint because they extended his

1 dry cell watch by 24 hours. (Dkt. No. 4 at 4, 7–14.)

2 Defendants moved for summary judgment, arguing that they are entitled to qualified
 3 immunity as to Plaintiff’s federal law claims and that Plaintiff waived any state law claims. (Dkt.
 4 No. 30.) Judge Creatura issued an R&R recommending that the Court grant Defendants’ motion
 5 and dismiss Plaintiff’s claims with prejudice. (Dkt. No. 34.) Judge Creatura reasons that:
 6 (1) Plaintiff had expressly waived his state law claims; (2) Plaintiff had not demonstrated that the
 7 dry cell watch extension was an extreme change in confinement triggering due process
 8 protections or that any such protections were clearly established as needed to defeat a qualified
 9 immunity defense; and (3) any potential § 1985 conspiracy claim would fail in the absence of a
 10 viable § 1983 claim. (*Id.* at 8–13.)

11 Judge Creatura also recommends overruling Defendants’ request to strike portions of
 12 Plaintiff’s declaration in support of his opposition to summary judgment. (*Id.* at 8.) Defendants
 13 object only to this recommendation. (Dkt. No. 35.)

14 Plaintiff has not objected to the R&R.

15 **II. DISCUSSION**

16 A district court must conduct a *de novo* review of those portions of a magistrate judge’s
 17 R&R to which a party properly objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A party
 18 properly objects when he or she files “specific written objections” to the R&R as required under
 19 Federal Rule of Civil Procedure 72(b)(2).

20 In their reply, Defendants object to several portions of Plaintiff’s declaration in support of
 21 his opposition to summary judgment, asserting that those portions are conclusory, speculative,
 22 and not based on Plaintiff’s personal knowledge. (Dkt. No. 33 at 2–5.) Judge Creatura overruled
 23 Defendants’ objections, noting that the admissibility of the contents of the evidence, and not its
 24 form, is what matters at the summary judgment stage. (Dkt. No. 34 at 8.) Defendants now clarify
 25 that they object not to the contents of the documents, but rather to Plaintiff’s statements about the
 26 documents that purport to be sworn factual statements based on his personal knowledge. (Dkt.

1 No. 35 at 2.)

2 To survive summary judgment, a party must satisfy the requirements of Federal Rule of
 3 Civil Procedure 56. *Block v. City of Los Angeles*, 253 F.3d 410, 418–19 (9th Cir. 2001). Under
 4 Rule 56, “[a]n affidavit or declaration used to support or oppose a motion must be made on
 5 personal knowledge, set out facts that would be admissible in evidence, and show that the affiant
 6 or declarant is competent to testify on the matters stated.” Fed. R. Civ. P. 56(c)(4). Affidavits
 7 that “do not affirmatively show personal knowledge of specific facts” are conclusory. *Shakur v.*
 8 *Schrirro*, 514 F.3d 878, 890 (9th Cir. 2008) (internal quotation marks omitted). “Where the facts
 9 contained in an affidavit are neither in the form of legal conclusions nor speculative, but are
 10 material facts based on the [the affiant’s] personal recollection of the events, the affidavit is not
 11 conclusory.” *United States v. \$223,178.00 in Bank Account Funds*, 333 F. App’x 337, 338 (9th
 12 Cir. 2009) (internal quotation marks omitted) (alterations in original).

13 The Court agrees that the portions of paragraphs 3, 10–15, and 18–22 of Plaintiff’s
 14 declaration that Defendants identify in their reply in support of summary judgment should be
 15 stricken. (Dkt. No. 33 at 2–5.) The portions in question contain legal conclusions and
 16 speculation, and do not demonstrate Plaintiff’s personal knowledge of specific facts.

17 The Court does not, however, completely agree with Defendants’ contention that portions
 18 of paragraph 8, regarding the disputed occurrence of a second normal bowel movement, should
 19 be stricken. (*Id.* at 2; Dkt. No. 34 at 4–5.) Defendants argue that, because Plaintiff is interpreting
 20 the logbook and relying on other documents, he is not basing this statement on his personal
 21 knowledge or memory. (Dkt. No. 33 at 2.) However, just because Plaintiff cites to the logbook
 22 and his complaint does not mean he lacks personal knowledge or recollection of his own alleged
 23 bowel movement. His personal involvement in that is undeniable. Defendants are assuming that
 24 Plaintiff necessarily relied on other documents to make this statement, but this assumption is
 25 unfounded. *See Nevada Dep’t of Corr. v. Greene*, 648 F.3d 1014, 1019 (9th Cir. 2011)
 26 (“Unfounded speculation as to an affiant’s alleged lack of personal knowledge of the events in

1 his affidavit does not render it inadmissible.”). However, since Plaintiff’s assertion that the
2 disputed evacuation occurred “at 7:29 a.m. through 7:50 a.m. and [was] completed at 8:00 a.m.”
3 does appear to derive from sources other than his personal knowledge, that particular detail
4 should be stricken. (Dkt. Nos. 32 at 2, 33 at 2.)

5 **III. CONCLUSION**

6 For the foregoing reasons, the Court hereby ORDERS that:

7 (1) Defendants’ objections (Dkt. No. 35) are SUSTAINED in part and OVERRULED in
8 part as stated above;

9 (2) The Court MODIFIES the R&R so as to STRIKE (a) the portions of paragraphs 3,
10 10–15, and 18–22 of Plaintiff’s declaration identified in Defendant’s reply (Dkt. No.
11 33), and (b) the portion of paragraph 8 detailing exact times of a disputed evacuation;

12 (3) The R&R (Dkt. No. 34) is ADOPTED as modified;

13 (4) Defendants’ motion for summary judgment (Dkt. No. 30) is GRANTED;

14 (5) Plaintiff’s remaining claims are DISMISSED with prejudice; and

15 (6) The Clerk is DIRECTED to send a copy of this order to Plaintiff and to Judge
16 Creatura.

17 DATED this 10th day of March 2022.



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21 John C. Coughenour
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26 UNITED STATES DISTRICT JUDGE